

### **REMARKS**

Reconsideration of the application is respectfully requested. Claims 1, 4-5, 7, 10, 13 and 15 have been amended. Claims 2-3, 6, 8, 12, 14 and 16 have been previously or presently cancelled. All amendments are fully supported by the original specification and drawings. No new matter has been added. Claims 1, 4-5, 7, 9-11, 13 and 15 remain pending.

### **CLAIM OBJECTION**

In the Office Action, claim 10 was objected to because of the following informality: on line 2, “photograph-from” should have been “photograph from”. Applicants have made this correction as advised by the Examiner.

### **DOUBLE PATENTING REJECTION**

Claims 13-16 were provisionally rejected as being unpatentable over claims 1, 5, 6 and 16 of copending Application No. 10/550,925 on the ground of nonstatutory obviousness-type double patenting. Applicants have amended the claims to ensure that the claims in both applications are patentably distinct. Therefore, reconsideration of this rejection is respectfully requested. However, should Examiner maintain the rejections, in the interest of bringing prosecution to a conclusion, Applicants will submit a Terminal Disclaimer on allowance of the pending claims, notwithstanding Applicants disagreement with the Examiner’s conclusion.

### **CLAIM REJECTIONS UNDER 35 U.S.C. § 102**

In the Office Action, claims 1, 6, 7, 9 and 12 were rejected under 35 U.S.C. § 102 (b) as being anticipated by U.S. Patent No. 6,377,699 to Musgrave et al. (hereinafter “Musgrave”). Claims 1, 6, 7, 9, 12, 13 and 15 were rejected as being anticipated by U.S. Patent Publication No. 2003/0129964 to Kohinata (hereinafter “Kohinata”).

Rejections of claims 6 and 12 have been rendered moot by their cancellations.

With respect to the remaining claims at issue, Applicants respectfully note that for a claim to be rejected under 35 U.S.C. § 102 (b), the prior art reference must clearly disclose each and every element of the claims in detail as complete as that which is claimed.

With respect to claims 1 and 7, amended claims 1 and 7 now recite in part “wherein the reference photograph is a photograph of an article or a photograph of an object.” Musgrave merely discloses a telephone with an integrated imager that photographs the iris of the user’s eye and compares it to a database to identify the user and unlock the telephone for use. Since the iris of a user’s eye is part of a human body, not an article or an object, Musgrave fails to teach this feature. Thus, for at least this reason, claims 1 and 7 are patentable over Musgrave under section §102 (b).

Claim 9 depends from claim 7, incorporating its recitations, and is thus also allowable over Musgrave, for at least similar reasons.

Claims 1, 6, 7, 9, 12, 13 and 15 were rejected under 35 U.S.C. § 102 (b) as being anticipated by Kohinata. Kohinata recites a cellular telephone that prevents use by unauthorized persons, using a combination of a temperature sensor (sensing temperature of the user) and a fingerprint of the user for authentication of the user. Thus, Kohinata also fails to teach the feature of “wherein the reference photograph is a photograph of an article or a photograph of an object,” recited in claims 1, 7, 13 and 15. Therefore, for at least these reasons, claims 1, 7, 13 and 15 are patentable over Kohinata under section §102 (b).

Claim 9 depends from claim 7, incorporating its recitations, and is thus also allowable over Kohinata, for at least similar reasons.

#### **CLAIM REJECTIONS UNDER 35 U.S.C. § 103**

In the Office Action, claims 4, 5, 10 and 11 were rejected under 35 U.S.C. § 103 (a) as being unpatentable over Musgrave in view of U.S. Patent No. 6,883,716 to De Jong (hereinafter “De Jong”). Claims 4, 5, 10-11, 14 and 16 were rejected under 35 U.S.C. § 103 (a) as being unpatentable over Kohinata in view of U.S. Patent No. 6,883,716 to De Jong (hereinafter “De Jong”).

De Jong merely teaches a photo carrying identification device, such as an identification card, that includes a microprocessor and a photo of a person with

stenanographically hidden information to allow authentication of an image. Thus, De Jong does not cure the above discussed deficiencies of Musgrave. Therefore, claims 1 and 7 remain patentable over Musgrave even when combined with De Jong. Similarly, De Jong does not cure the above discussed deficiencies Kohinata. Therefore, claims 1, 7, 13 and 15 remain patentable over Kohinata even when combined with De Jong.

Claims 4, 5, 10, 11, 14 and 16 depend from either claim 1, 7, 13, or 15, incorporating their recitations. Therefore, for at least similar reasons, claims 4, 5, 10 and 11 are patentable over Musgrave even when combined with De Jong, and claims 4, 5, 10, 11, 14 and 16 are patentable over Kohinata even when combined with De Jong.

### CONCLUSION

In view of the foregoing, allowance of claims 1, 4-5, 7, 9-11, 13 and 15 is solicited. If the Examiner has any questions concerning the present paper, the Examiner is kindly requested to contact the undersigned at (206) 381-8819. If any fees are due in connection with filing this paper, the Commissioner is authorized to charge the Deposit Account of Schwabe, Williamson and Wyatt, P.C., No. 50-0393.

Respectfully submitted,  
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